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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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 COMMISSIONER-CHAIRMAN  
 RENZ D. JENNINGS  
 COMMISSIONER  
 CARL J. KUNASEK  
 COMMISSIONER

Arizona Corporation Commission

**DOCKETED**

JAN 16 1998

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IN THE MATTER OF THE COMPETITION ) DOCKET NO. U-0000-94-165  
 IN THE PROVISION OF ELECTRIC )  
 SERVICES THROUGHOUT THE STATE OF ) **SRP'S REPLY IN SUPPORT OF ITS**  
 ARIZONA. ) **REQUEST FOR A NEW PROCEDURAL**  
**ORDER**

**Reply to the Response of APS**

SRP and its customers have consistently advocated that the Competition Rules remain intact, and that the start of competition not be delayed. As the implementation of competition requires coordination of efforts statewide, SRP has participated in the public debates which were part of the Commission's rule-making process. But, when the proceedings turn to the specific issues of stranded cost numbers and recovery mechanisms, SRP must move into its own public process. This is because SRP has its own independent responsibilities and authorities which it

1 cannot delegate to a Commission adjudicatory process. This is also because SRP should not  
2 become involved, and does not want to become involved, in a quasi-judicial case which will  
3 determine actual stranded cost numbers of other utilities. It is for these reasons that it is  
4 "appropriate" for SRP to take the position that rule-making activities should be conducted in a  
5 rule-making forum<sup>1</sup>.

6 The issue is not that SRP wants to avoid discovery and cross examination. Rather, the  
7 point is that SRP must conduct its own processes and make its own determinations. While SRP  
8 as a governmental body may be subject to certain public records laws and disclosure  
9 requirements, it is the SRP board which is responsible for maintaining distribution of records and  
10 information. SRP cannot delegate this responsibility to the Commission through a discovery  
11 process. SRP must detour to its own proceedings at the point at which the Commission turns  
12 from general policy to evidentiary hearings.

13 SRP has never argued that the procedural orders are unlawful. SRP readily acknowledges  
14 that the Commission has wide latitude in choosing the methods for rule-making. It is rather  
15 SRP's suggestion that the process would be more meaningful, and would permit fuller  
16 participation, if the quasi-legislative format is continued.<sup>2</sup>

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18 <sup>1</sup> We cannot resist a preliminary comment on the hypocrisy of the APS response. APS has sued the  
19 Commission claiming that the Competition Rules are unconstitutional. Waiting for a constitutional amendment  
20 could result in substantial delay. And, while the parties are debating the proper treatment of stranded costs, APS  
21 has negotiated a rate order that is already allowing APS to recover a portion of its stranded costs in current rates.  
22 (In its 1996 rate order APS received an order allowing it to recover over eight years a portion of its stranded costs  
23 called the regulatory assets. See the APS pre-filed testimony, filed on January 9, 1998 in this docket, testimony of  
24 Jack Davis, page 12, lines 14 through 19.) Now, in this response, APS urges that SRP should remain a party to  
25 "help insure that meaningful retail access is provided to the thousands of SRP customers". Yet, in the same  
26 document, APS reserves its right to *again* sue the Commission, and further delay the implementation of  
competition. Specifically in footnote 2, on page 3, APS states:

The proposed limits on cross-examination and the somewhat amorphous scope of these proceedings raise  
potential due process concerns. However, APS believes it would be premature to raise such issues unless  
and until an actual controversy develops.

The Commission should consider APS's comments in appropriate perspective.

<sup>2</sup> It is easy for APS to argue for an evidentiary hearing. It has been in this game for years. It has been nice to see  
the active participation in the rule-making process of many new interests, many participating, as needed, without  
lawyers. An open process, not requiring lawyers and evidentiary rules, encourages full participation. The

1 APS appears to argue that SRP is already an involuntary party to the adjudicatory  
2 proceeding, and should be forced to participate. APS states no basis upon which the Commission  
3 would have jurisdiction to force SRP to participate in adjudicatory stranded costs proceedings<sup>3</sup>.  
4 The Constitution expressly recognizes that there is no need for the Commission to impose a  
5 second level of public review over a public power entity which is already answerable to its voters.

#### 6 **Reply to the Response of Staff**

7 As mentioned above, SRP is not arguing that the procedural orders are illegal. SRP  
8 simply argues that a quasi-legislative format is more accepted for rule making. SRP points to the  
9 provisions of the APA, which recognize this distinction, and to the Staff's own argument, that an  
10 evidentiary proceeding would be inappropriate for rule making.

11 Staff argues that participation is not limited under the new format, because the order was  
12 sent to all parties and the participants in the stranded cost workshops were automatically  
13 designated as parties. But, the volumes of material produced in the workshops have been  
14 specifically excluded by the hearing officer. This phase of the docket will be decided on evidence  
15 produced at these evidentiary hearings.

16 Staff also argues that a party may participate through public comment. But, public  
17 comment is limited to a five minute presentation at the beginning of the hearings. This hardly  
18 gives a participant the opportunity to provide meaningful input on these complex issues.

19 SRP is convinced that the Staff's intentions are good, and that the procedural order does  
20 encourage broad participation. But the realities in a major evidentiary case is that the public  
21 comments, briefly made at the beginning of the case, have little or no impact on the final result.  
22 Only those parties who can afford experienced counsel, expert witness and consultants, who  
23

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24 legislature does not conduct adversarial hearings, yet it manages to enact laws having much greater impact than  
those being considered in this docket.

25 <sup>3</sup> APS argued that SRP submits itself to Commission jurisdiction in certain line siting and financing matters.  
While SRP is subject to these ministerial review processes, this limited involvement by the Commission in no sense  
26 constitutes regulation in the same sense that it regulates public service corporations, which would be a violation of  
Article 15, Section 2 of the Constitution.

1 participate actively in the proceedings (translate to "expensive") truly have an effective voice and  
2 opportunity to influence the final result.

3 SRP is serious about its continued statements and actions to bring competition to the  
4 Arizona electric industry. It makes these suggestions in a true constructive spirit to further the  
5 statewide debates in the forum of Commission rule making. If the Commission wants to move the  
6 game to the home court of the regulated utilities, this is its choice.

7 SRP respectfully requests that the Commission grant its request and change the procedural  
8 orders issued in this docket.

9 DATED this 16th day of January, 1998

10 JENNINGS STROUSS & SALMON, P.L.C.

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12  
13 By



14 Kenneth C. Sundlof, Jr.

15 SALT RIVER PROJECT AGRICULTURAL  
16 IMPROVEMENT AND POWER DISTRICT

17 By Jane D. Alfano  
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